IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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Case No. **FAO No. 603 of 1986**

Date of decision : September 6, 2006

Kamla Devi and others ... Appellants.

Versus

Pepsu Road Transport Corporation and others. ... Respondents

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C O R A M

HON'BLE MR. JUSTICE RANJIT SINGH

Present: None

RANJIT SINGH, J

Kamla Devi, her two minor daughters, a son and her parents-in-law, are in appeal against the judgment of Motor Accidents Claims Tribunal, Faridkot (hereinafter referred to as 'the Tribunal') denying them compensation on account of death of Raj Kumar, husband of Kamla Devi, appellant. The Tribunal, even after having found that the accident was caused on account of rash and negligent driving of the bus driver, declined compensation to the appellants and leaving them with a meagre payment of Rs.15,000/- due to no fault liability clause. Through this appeal, they have challenged this finding of the Tribunal and seek enhancement of compensation as determined and awarded to them.

On 12.2.1985, Raj Kumar, husband of appellant no.1, was proceeding on a scooter bearing registration no. DHS 5374 on Ludhiana-Moga Road for purchasing motor parts. At about 5.00 P.M., a bus bearing registration no. PUC 3381 driven by one Kulwant Singh (respondent) came from Ludhiana

side and hit the scooter driven by Raj Kumar while it (the scooter) was being driven on its left side. The scooter, after being hit, was dragged to a distance of 35 metres. As a result, Raj Kumar received serious injuries and later succumbed to these. A claim petition was, accordingly, filed by his wife and others, as stated above, claiming a compensation of Rs.4,00,000/- on account of the death of said Raj Kumar. The evidence was led to show that deceased Raj Kumar owned a truck which he had purchased after taking a loan. It is also on record that he was paying a sum of Rs.4,000/- per month as an installment of the loan and otherwise was saving more than Rs.3,000/- per month even thereafter. It was, accordingly, pleaded that Late Raj Kumar was contributing a sum of Rs.2,500/- per month for the maintenance of the claimant's family.

A written statement was filed contesting the averments made in the claim petition. The accident was denied. The respondents otherwise did not lead any evidence before the Tribunal. One Ajmer Singh, AW-3, who had witnessed this accident, was produced as a witness on behalf of the claimants. He testified that he had seen the bus no. PUC3381 driven by Kulwant Singh, respondent, hitting the scooter driven by Late Raj Kumar while the scooter was on its life side. This witness claimed that at the time of accident, he was standing at the shop of one Des Raj and taking tea. He clearly brought out in his evidence that the scooter and its rider-Raj Kumar, were dragged to a distance of 30-35 karams. No evidence was led on behalf of the respondent. Even the driver of the truck Kulwant Singh, respondent also did not step into the witness box. The Tribunal relied upon the version of Ajmer Singh and held that the accident took place because of rash and negligent driving of Kulwant Singh, driver of the bus. This finding is not under challenge in any manner. It is even otherwise not open to challenge on any ground.

Having so held, the Tribunal made assessment in regard to compensation payable in the case. Reference was made to the evidence showing

that Raj Kumar was owner of a truck to the extent of 95% and he had purchased the same by raising a loan. It was noticed that Raj Kumar was not driving the truck himself and the driver, employed by him still continued to drive the same even after his death. Thus, noticing these facts, the Tribunal concluded that the claimant did not suffer any pecuniary loss as the truck would still be driven by the driver, as was being done earlier and hence the income being contributed by Late Raj Kumar to the family, would be the same even after his death. The Tribunal, accordingly, held that there is no loss of earning and hence left the claimants high and dry by paying Rs.15,000/- on account of no fault liability.

The approach of the Tribunal in not awarding any compensation after having found that the death of Raj Kumar was on account of rash and negligent act, seems to be unjust and unfair. There may be some thing in the observation of the Tribunal that the income that was earlier being contributed by the deceased to the family would continue but to say that the family had not suffered any pecuniary or non-pecuniary loss on account of the death of head male member of the family, would clearly sound unjustified. One can reasonably say that to look after truck is not an easy task especially for a lady and minor son and daughters left behind by Late Raj Kumar. To deny compensation on the ground that death of head of family would not make any difference, cannot be sustained. To further say that deceased Raj Kumar must have been spending some thing on himself, and his loss would offset loss in income, if any, as has been done by the the Tribunal, to negate his contribution to the family, is rather justified. As already observed by the Hon'ble Supreme Court of India in **R.D.Hattangadi** versus **M/s. Pest Control (India) Pvt. Ltd.,**(1995-2) PLR 298, while assessing the amount of compensation, no hard and fast formula can be followed and some guess work, some hypothetical consideration etc. would come into play while assessing the quantum of compensation. It is required to be noticed that the appellant had not only suffered a pecuniary loss on account of the death of Late Raj Kumar, but must have suffered

mental shock and so much other aspects connected therewith leading to non-pecuniary loss to the family and the appellants. The wife has been deprived the company of her husband at this young age. Minor daughters and son have been left and deprived of love and affection of their father. Onerous liability would fall on the appellant-wife not only to bring up the children but also to settle them in life, alone without any help and assistance from her life partner. Under the circumstances, it cannot be said that the appellant had not suffered any loss either pecuniary or non-pecuniary due to this loss of male member of family who alone was looking after the business of transport. The death of Raj Kumar certainly would go to affect the business, as the appellants would not be in that efficient position to look after the running of truck business. Since it is on record that Late Raj Kumar was earning a sum of Rs.3,000/- per month and used to contribute a sum of Rs.2,500/- per month for the maintenance of the claimants. Making some guess work and some hypothetical assessment, it can reasonably be said that the appellants suffered a loss of Rs.800/- Rs.1,000/-, if not more, on account of the death of Late Raj Kumar, who was aged about 31 years. Taking into account the dependability of the family and non-pecuniary loss, it would be reasonable and fair to assess a sum of Rs.1,15,000/- as a compensation to the appellant on account of death of Late Raj Kumar. A sum of Rs.15,000/- has already been paid on account of no fault liability, which would be excluded from the compensation so assessed. Accordingly, I would hold that the appellants would be entitled to a sum of Rs.1,00,000/- as additional sum of compensation, which is payable with interest at the rate of 9 per cent per annum from the date it fell due to the date of payment.

The appeal shall stand allowed in the above noted terms.

(RANJIT SINGH)
JUDGE

September 13, 2006
RS